

359.502, and to place that employee in another civil service position, the appointee may request an informal hearing before an official designated by the Board. Under 5 CFR 359.502, the agency proposing the removal must provide the appointee 30 days advance notice and must advise the appointee of the right to request a hearing. If the appointee files the request at least 15 days before the effective date of the proposed removal, the request will be granted.

(b) *Place of filing.* A request for an informal hearing under paragraph (a) of this section must be filed with the Clerk of the Board. After the request has been assigned to a judge, subsequent pleadings must be filed with the Board office where the judge is located.

(c) *Initial filing and service.* The appointee must file two copies of the request, together with numbered and tabbed exhibits or attachments, if any, and a certificate of service listing the agency proposing the appointee's removal or the agency's representative. The certificate of service must show the last known address, telephone number, and facsimile number of the agency or its representative. The appointee must serve a copy of the request on the agency or its representative, as shown on the certificate of service. The initial filing may not be submitted in electronic form.

(d) *Subsequent filings and service.* Each party must serve on every other party or the party's representative one copy of each of its pleadings, as defined by § 1201.4(b). A certificate of service describing how and when service was made must accompany each pleading. Each party is responsible for notifying the Board and the other parties in writing of any change in name, address, telephone number, or facsimile number of the party or the party's representative.

(e) *Method of filing and service.* A filing may be by mail, by facsimile, or by personal or commercial delivery, to the office determined under paragraph (b) of this section. Service may be by mail, by facsimile, or by personal or commercial delivery to each party or the party's representative, as shown on the certificate of service.

(f) *Electronic filing.* All pleadings may be filed and served in electronic form at the MSPB e-Appeal site (<https://e-appeal.mspb.gov/>), provided the requirements of § 1201.14 are satisfied.

[62 FR 48451, Sept. 16, 1997, as amended at 68 FR 59864, Oct. 20, 2003; 69 FR 57630, Sept. 27, 2004; 73 FR 10130, Feb. 26, 2008]

§ 1201.144 Hearing procedures; referring the record.

(a) The official designated to hold an informal hearing requested by a career appointee whose removal from the Senior Executive Service has been proposed under 5 U.S.C. 3592(a)(2) and 5 CFR 359.502 will be a judge, as defined at § 1201.4(a) of this part.

(b) The appointee, the appointee's representative, or both may appear and present arguments in an informal hearing before the judge. A verbatim record of the proceeding will be made. The appointee has no other procedural rights before the judge or the Board.

(c) The judge will refer a copy of the record to the Special Counsel, the Office of Personnel Management, and the employing agency for whatever action may be appropriate.

§ 1201.145 No appeal.

There is no right under 5 U.S.C. 7703 to appeal the agency's action or any action by the judge or the Board in cases arising under § 1201.143(a) of this part. The removal action will not be delayed as a result of the hearing.

REQUESTS FOR PROTECTIVE ORDERS

§ 1201.146 Requests for protective orders by the Special Counsel.

(a) Under 5 U.S.C. 1204(e)(1)(B), the Board may issue any order that may be necessary to protect a witness or other individual from harassment during an investigation by the Special Counsel or during the pendency of any proceeding before the Board, except that an agency, other than the Office of the Special Counsel, may not request a protective order with respect to an investigation by the Special Counsel during such investigation.

(b) Any motion by the Special Counsel requesting a protective order must include a concise statement of reasons justifying the motion, together with

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any relevant documentary evidence. Where the request is made in connection with a pending Special Counsel proceeding, the motion must be filed as early in the proceeding as practicable.

(c) Where there is a pending Special Counsel proceeding, a Special Counsel motion requesting a protective order must be filed with the judge conducting the proceeding, and the judge will rule on the motion. Where there is no pending Special Counsel proceeding, a Special Counsel motion requesting a protective order must be filed with the Clerk of the Board, and the Board will designate a judge, as defined at § 1201.4(a) of this part, to rule on the motion.

§ 1201.147 Requests for protective orders by persons other than the Special Counsel.

Requests for protective orders by persons other than the Special Counsel in connection with pending original jurisdiction proceedings are governed by § 1201.55(d) of this part.

§ 1201.148 Enforcement of protective orders.

A protective order issued by a judge or the Board under this subpart may be enforced in the same manner as provided under subpart F of this part for Board final decisions and orders.

Subpart E—Procedures for Cases Involving Allegations of Discrimination

§ 1201.151 Scope and policy.

(a) *Scope.* (1) The rules in this subpart implement 5 U.S.C. 7702. They apply to any case in which an employee or applicant for employment alleges that a personnel action appealable to the Board was based, in whole or in part, on prohibited discrimination.

(2) “Prohibited discrimination,” as that term is used in this subpart, means discrimination prohibited by:

(i) Section 717 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e–16(a));

(ii) Section 6(d) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(d));

(iii) Section 501 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791);

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(iv) Sections 12 and 15 of the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 631, 633a); or

(v) Any rule, regulation, or policy directive prescribed under any provision of law described in paragraphs (a)(2) (i) through (iv) of this section.

(b) *Policy.* The Board’s policy is to adjudicate impartially, thoroughly, and fairly all issues raised under this subpart.

§ 1201.152 Compliance with subpart B procedures.

Unless this subpart expressly provides otherwise, all actions involving allegations of prohibited discrimination must comply with the regulations that are included in subpart B of this part.

§ 1201.153 Contents of appeal.

(a) *Contents.* An appeal raising issues of prohibited discrimination must comply with § 1201.24 of this part, with the following exceptions:

(1) The appeal must state that there was discrimination in connection with the matter appealed, and it must state specifically how the agency discriminated against the appellant; and

(2) The appeal must state whether the appellant has filed a formal discrimination complaint or a grievance with any agency. If he or she has done so, the appeal must state the date on which the appellant filed the complaint or grievance, and it must describe any action that the agency took in response to the complaint or grievance.

(b) *Use of Board form or Internet filing option.* An appellant may comply with paragraph (a) of this section by completing MSPB Form 185, or by completing all requests for information marked as required at the e-Appeal site (<https://e-appeal.mspb.gov>). MSPB Form 185 can be accessed at the Board’s Web site (<http://www.mspb.gov>).

[54 FR 53504, Dec. 29, 1989, as amended at 68 FR 59864, Oct. 20, 2003; 69 FR 57631, Sept. 27, 2004]

§ 1201.154 Time for filing appeal; closing record in cases involving grievance decisions.

Appellants who file appeals raising issues of prohibited discrimination in